

FARAD CONTINUATION SHEET

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

CIVIL APPLICATION NO.126 OF 2004

IN

FAMILY COURT APPEAL (ST.) NO. 19482 OF 2004.

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Office Notes, Office Memoranda
of Coram, appearances, Court's
orders or directions & Registrar's orders.

Court's or Judge's Order

**CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.**

DATE : 10/08/2004.

1. The appellant-wife has filed the present application for condonation of delay in preferring the Appeal. The cause shown is as set out in paragraph 8 of the said application.

Respondent-husband has filed Affidavit opposing the application for condonation of delay for reasons set out in the said Affidavit.

2. After hearing the parties, both on the application for condonation of delay and on the merits of the matter, it would not be possible to interfere with the finding of fact

recorded by the Family Court insofar as the decree for divorce is concerned. However, we find that insofar as maintenance is concerned, the learned Judge has basically proceeded on the footing that the appellant herein has suppressed material from the Court. There is no evidence considered of the paying capacity of the respondent.

3. Insofar as the application for condonation of delay is concerned, there is much to be said for the cause shown. However, in the instant case, the parties had married under the Special Marriage Act. The case of the appellant is that at least during the pendency of the proceedings, she has lost her job. It is in that context that the Family Court ought to have considered the plea for maintenance as claimed by the appellant. There is a delay of about 249 days in preferring the Appeal. We have indicated to both the counsel that we do not propose to interfere with the decree for divorce, but on the point of re-

consideration of the matter for maintenance. It is in that context that we propose to condone the delay and hear the Appeal forthwith.

4. In that light, the C.A. is made absolute in terms of prayer clause (b).

5. Office to register the First Appeal.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]